



# **MERCED SUPERIOR COURT**

## **LOCAL RULES**

EFFECTIVE JANUARY 1, 2006

**Frank Dougherty, Presiding Judge**  
**John D. Kirihara, Asst. Presiding Judge**  
**Hugh M. Flanagan, Judge**  
**Ronald W. Hansen, Judge**  
**Brian L. McCabe, Judge**  
**Robert D. Quall, Judge**

**Thomas S. Burr, Commissioner**  
**Ralph J. Cook, Commissioner**  
**Gerald W. Corman, Commissioner**  
**Harry L. Jacobs, Commissioner**

**Kathleen Goetsch, Court Executive Officer**

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**LOCAL COURT RULES**

**RULE 1: COURT ORGANIZATION**

**a. Adoption and Amendment of Rules**

These rules shall be known and cited as “Local Rules for the Superior Court of California, County of Merced.” These rules shall become effective as of July 1, 2004, and on that date all other rules previously adopted by this Court and the Municipal Court are repealed, provided that no action heretofore taken in compliance with such rules shall be made invalid or ineffective by such repeal. The content and numbering of the Local Rules of Court have significantly changed.

**b. Presiding Judge**

The business of the Court shall be directed by one of the Judges, designated as the Presiding Judge, who shall act in such capacity for a term of two calendar years. The Judges of this Court shall meet during the month of September of every other year, commencing with September 2004, and by a majority secret vote select the Presiding Judge and Assistant Presiding Judge for the succeeding two-year term commencing January 1<sup>st</sup>. The Assistant Presiding Judge shall be assigned such duties as the Presiding Judge deems necessary and shall act as Presiding Judge during the elected Presiding Judge’s absence. In the event a Presiding Judge leaves office before the end of his or her term, the Assistant Presiding Judge shall assume the position of Presiding Judge and a new Assistant Presiding Judge shall be elected. Each shall serve in such capacity until the next regularly scheduled election.



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The Presiding Judge shall have those powers and duties conferred on the Presiding Judge as provided by statute, California Rules of Court, and rules as adopted by the superior court.

The Presiding Judge's duties shall include, but are not necessarily limited to, the following:

- Presiding over regular and special courts meetings.
- Presiding over executive committee meetings.
- Setting and implementing Policies and Procedures.
- Planning for the courts future needs.
- Supervising the Executive Officer.
- Conducting the day to day affairs of the court.

### **c. Executive Committee**

There is hereby established an executive committee. The committee shall be comprised of at least three (3) Judges, one of whom must be the Presiding Judge, and one of whom must be an Assistant Presiding Judge. The remaining Judge members shall be appointed by the Presiding Judge. The Court Executive Officer shall be a non voting member and shall serve as secretary of the executive committee.

The term of office of executive committee members shall be two (2) years, coinciding with the term of the Presiding Judge.

The executive committee shall hold regular meetings at least twice every month. Any Merced County Superior Court Judge may attend any meeting of the committee. Notice of the time and place of the meeting shall be provided to all Judges at least 24

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hours before the meeting. Meetings of the executive committee will be chaired by the Presiding Judge.

The duties of the executive committee shall include:

1. Recommending policy and procedures for implementation by the Presiding Judge;
2. Reviewing, in its discretion, the decisions and actions of the Presiding Judge and Executive Officer and, where appropriate, making recommendations to the Presiding Judge;
3. Establishing budgetary priorities and making recommendations for Judges meetings thereon;
4. Recommending for hire an Executive Officer and Assistant Executive Officer;
5. Conducting an annual evaluation of the performance of the Executive Officer;
6. Interviewing and recommending for employment Court Commissioners.

### **d. Meeting of the Judges**

There shall be a meeting of the Judges held on the first Thursday of each month to conduct such business as may properly come before them. If the first Thursday falls on a holiday, then the following Thursday is the meeting day. Additional meetings may be called by the Presiding Judge or by a majority of the Judges.

Each Judge shall have one vote at the Judges' meetings. Any judge that does not attend a regular or special meeting (except a meeting to select the Presiding Judge) may authorize another Merced County Superior Court Judge to exercise a written proxy, general or specific as stated in the proxy, and vote on his or her behalf.

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### **e. Hours of Judicial Business**

(1) The Court will be open for judicial business from 8:00 a.m. until 5:00 p.m. on all court days.

(2) All clerk's offices of the court will be open for business 8:00 a.m. to 4:00 p.m. on all court days. The clerk shall not allow the public to enter the offices for the purposes of filing papers or obtaining other official services after this 4:00 p.m. closing time except as directed by a judge of the court.

### **f. Scheduling of Trials and Hearings**

(1) A list of the times and days of the Court's various calendars, for both civil and criminal matters, and including the hearing of ex-parte matters can be accessed at (209) 725-4100 or at [www.mercedcourt.org](http://www.mercedcourt.org). The parties are required to check for the availability of a calendar before requesting that any matter be set; special settings will occur only in the most extraordinary circumstances.

### **g. Policy Orders**

The business of this court shall be supervised by the Presiding Judge. The Presiding Judge shall also prepare and publish, with the concurrence of a majority of the judges of this court, such routine rules, orders, or regulations, to be known as "Policy Orders," as may be required to expedite and facilitate the business of this court.

*(Effective July 1, 2004).*

## **RULE 1.2: COURT SECURITY**

Security in the courtrooms shall be maintained by the Sheriff of the County of Merced, unless otherwise ordered by the Presiding Judge.

*(Effective July 1, 2004).*

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**RULE 1.3: COURT ATTIRE**

No person shall appear in court without a shirt, or barefoot, or wearing a tank top. Bailiffs of the court are to remove any person violating this rule. This rule does not limit any judge from prescribing appropriate attire in the courtroom.

*(Effective July 1, 2004).*

**RULE 1.4: CUSTODY OF COURT FILES AND SIGNED ORDERS**

No exhibit or evidence on file with the clerk in any civil or criminal case shall be taken from the clerk's office or courtroom.

Orders signed by a judge must be filed immediately in the clerk's office. An unfiled, signed order shall not be taken from the courthouse.

*(Effective July 1, 2004).*

**RULE 1.5: DEFINITIONS**

**a. Clerk**

The word "Clerk" means the clerk of the court or any deputy clerk.

**b. Judicial Officer**

The words "Judicial Officer" mean any duly appointed or elected judge of the court, any duly appointed commissioner, any judge or retired judge assigned by the Chairperson of the Judicial Council to serve as a judge of the court, and any attorney appointed by the Presiding Judge to serve as a temporary judge, while so serving.

*(Effective July 1, 2004).*

**RULE 1.8: EX PARTE MATTERS**

All ex parte applications which require notice will be noticed in the Civil Law and Motion Courtroom for a ruling. Hearings shall be scheduled only as authorized by the

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clerk's office. Copies of all papers to be presented at the hearing shall be filed with the court no later than 12:00 noon the day before the scheduled hearing time.

**a.** The Civil Law and Motion Judge shall be available for the signing of ex parte orders or shall designate a judge or judges who will be available for such signing.

**b.** It is the policy of the courts that, unless ordered otherwise by the Presiding Judge, attorneys shall not seek to have ex parte orders signed by judges other than set forth in **a.** above.

**c.** Requests for ex parte orders shall be based solely on the moving papers without oral argument or comment by counsel, but the judge may, in his or her own discretion, exempt matters from this provision.

**d.** Notice shall be in accordance with California Rule of Court 379(b), and all paperwork shall be submitted no later than 12:00 noon the day before the scheduled hearing.

*(Effective July 1, 2004)*

**RULE 2: FILING PROCEDURES**

**a. Time of Filing Papers**

All documents and other papers shall be filed during the hours set forth in Rule 1e (2) above. All papers necessary to hearing in default cases (including default dissolutions), return of service on orders to show cause (except wherein the Court has by order shortened the time of service), probate matters, adoptions, compromise claims of minors, including proof of notice, posting affidavits of publication, agreements in dissolution actions, etc., shall be filed by 4:00 p.m. on the third court day preceding the date set for hearing.

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Example: If a matter is set for hearing on a Monday morning, the documents pertaining to said hearing shall be filed with the Clerk of the Superior Court by 4:00 p.m. on the Wednesday preceding that Monday. Saturdays, Sundays, and holidays are not considered court days.

The Clerk shall process court filings on a priority basis, insuring that all documents are properly entered and filed in the appropriate file. The Clerk shall further give processing priority to documents with imminent trial or hearing dates, insuring that documents reach the court file prior to delivery of the file to Court for hearing, or as soon thereafter as is reasonably possible in consideration of the date of receipt.

### **b. Compliance with California Rules of Court 311**

All documents presented for filing shall comply with the provisions of Rule 311 of the California Rules of Court.

### **c. Completion of File in Default and Uncontested Matters**

No hearing will be set in a default or uncontested matter until all requisite pleadings and documents have been filed and the Clerk has entered the default, unless it is a matter requiring Court entry of default, in which case the return of service must be filed before the request for hearing.

### **d. Filing of Orders**

All written orders shall be filed in the office of the Clerk immediately after they are signed.

### **e. Forma Pauperis Procedure**

All parties should refer to California Rules of Court, Rule 985.

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**f. Courtesy Copies**

(1) Except as to cases designated as “complex,” one courtesy copy of all papers filed in relation to any motion to be heard on the Law and Motion Calendar must be provided on the same day the papers are filed, including opposition and reply papers. The clerk shall endorse such courtesy copies as filed, and shall forward them to the Law and Motion department. If the motion attacks a pleading already on file, a courtesy copy of that pleading must also be provided.

**g. FAX Filing and Service**

Parties may file pleadings by FAX through Official Payments Corp. (800-322-4945) pursuant to California Rules of Court, Rules 2001 et. seq..

(1) All FAX filings shall be accompanied by the Judicial Council Facsimile Filing Cover Sheet as the first page transferred, followed by any special handling instructions. Neither the cover sheet or handling instructions will be filed in the case. The court is not required to keep a copy of the cover sheet.

(2) *RESERVED*

(3) *RESERVED*

(4) *RESERVED*

(5) All FAX filings are to be received no later than 4:00 p.m. in order to be filed stamped with that day’s date. Otherwise, they will be file stamped the next court day.

(6) *RESERVED*

*(Effective July 1, 2004).*

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**RULE 3: CIVIL LAW AND MOTION GENERALLY**

**a. Failure to Appear**

Any party may waive their right to appear at any Law and Motion hearing by providing the court and all counsel with written notice of their intent not to appear and to waive oral argument. If the party has filed documents in support or in opposition to a law and motion, the court will consider the non-appearing parties position based upon the documents filed. A written notice of intent not to appear shall be deemed a waiver of oral argument. One party's notice of intent not to appear shall not impair any other parties right to appear and argue their respective position.

Unless the moving party has given written notice of intent not to appear, failure of moving party or counsel to appear at the time set in the department to which the matter is assigned, unless excused by the Judge, shall be deemed cause:

- (1) For placing such matter off calendar,
- (2) For proceeding to hear the matter in the absence of party or counsel.

**b. Papers on File**

Pursuant to Rule 981.1, California Rules of Court, all local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies and form and format of papers are preempted by the California Rules of Court.

**c. Failure to Comply with Rules**

Failure to file a memorandum of points and authorities by the filing deadline or to comply with Rule 313, California Rules of Court, is a waiver of the memorandum; and



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in the case of the moving party, the failure to timely file may be considered an admission that the motion is without merit.

**d. Tagging Attachments and Exhibits**

All attachments and exhibits shall comply with California Rules of Court, Rules 311 and Rule 313.

Each attachment and exhibit to any document, including but not limited to the motion, notice of motion, declaration and memorandum of points and authorities, shall bear a tag setting forth the letter/number designation given it in the document.

**e. Evidence at Hearings**

Without court permission in writing, oral testimony is not allowed. If counsel believes a particular case justifies oral testimony, the statement required by California Rules of Court, Rule 323 must include an explanation as to why the evidence cannot be presented by declaration or affidavit.

*(Effective July 1, 2004).*

**RULE 3.1: SUMMARY JUDGMENT AND SUMMARY ADJUDICATION**

Pursuant to Rule 981.1, California Rules of Court, all local court rules relating to Summary Judgment motions are preempted by Rules 324 – 345 of the California Rules of Court.

*(Effective July 1, 2004).*

**RULE 3.2: TENTATIVE RULINGS**

The Court adopts the tentative ruling procedure set forth in CRC 324(b) until further change. *(Effective July 1, 2004).*

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**RULE 4: CASE MANAGEMENT**

**a. General**

(1) In accordance with and as required by Rule 209, California Rules of Court, the Court has adopted the following procedures to evaluate each case and assign each case to a case-management plan. The court will use the factors listed in California Rules of Court, Rule 210, in evaluating cases and selecting a case-management plan.

(2) All parties or their counsel of record must file and serve a Case Management Statement using the mandatory Case Management Statement Form (CM-110). Such statement must be filed no later than 15 calendar days before the date set for the case management conference or review.

(3) All applicable items must be completed on Form CM-110. Any answer for which there is not sufficient space on the forms shall be completed on an attached sheet. In lieu of each party filing a separate Case Management Statement, any two or more parties may file a joint statement. Unless the court orders another time period, all parties must meet and confer in person or by telephone no later than 30 calendar days before the date set for the management conference to consider each of the subjects listed in California Rules of Court, Rule 212(e) and (f).

(4) This Rule applies to all: “general civil cases” as defined in California Rules of Court, Rule 207(b). It applies to cases designated as uninsured motorist cases and to coordinated cases only as specified in Rule 207(c) and (d).

**b. Case Management Conference and Order**

1. Upon the filing of any complaint or other initial pleading in any case included with this Rule 4, the clerk will provide the filing party with a “Notice of Inclusion in Delay Reduction Program/Notice of Case Management Conference.” Said Notice must be served along with the complaint or other initial pleading. A copy of the Notice will be placed in the court file.

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(a). The case management conference will be held no later than 180 days after the filing of the initial pleading before a court official designated by the Presiding Judge. Unless notified by the Court that no appearance is necessary, all parties or their attorneys must be present at the conference or appear by telephonic conference call, and must be prepared to discuss all elements of the case inquired into on the Case Management Form and the subjects listed in California Rule of Court, Rule 212(e).

(b). At the Case Management Conference, the Court will enter a Case Management Order setting a schedule for subsequent proceedings, and otherwise providing for management of the case as specified in California Rules of Court, Rule 212(i) (1)-(13).

### **c. Assignment to One Judge for all or Limited Purposes; Complex Cases**

(1) In order to promote the efficient administration of justice, the presiding judge may on the court's own motion or on the noticed motion of a party, order the assignment of any case to one judge for all or limited purposes.

(2) A civil case which has been identified as complex, under California Rules of Court, Rule 1800 through 1812, shall be assigned to one judge for all purposes.

### **d. Telephone Appearances**

Appearances by telephone are permitted and encouraged under the circumstances and procedures listed in California Rules of Court, Rule 298. The telephone number to which calls can be made will be posted on the court's website and in the Notice of Inclusion in Delay Reduction Program/Notice of Case Management Conference.

*(Effective July 1, 2004).*

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**RULE 5:      RESERVED**

**RULE 6:      SETTLEMENT CONFERENCES**

**a.          Requirement of Settlement Conferences**

A settlement conference is required in all civil trial matters. The time, date and place of the mandatory settlement conference will be set at the Case Management Conference and included in the Case Management Conference Order. At the request of any party or on the court's own motion, the court may set a settlement conference in addition to the mandatory conference

**b.          Persons Attending**

Trial counsel, parties, and persons with full authority to settle the case must personally attend the conference, unless excused by the Court for good cause shown. If any consent to settle is required for any reason, the party with that authority must be personally present at the conference. The Court may impose sanctions in the event of an unexcused absence of principal or insurer.

Experience has demonstrated the importance and necessity of the presence of all persons whose consent will be required for binding settlement agreement. Therefore, only extraordinary circumstances will excuse the non-appearance at the conference of the principals and authorized representative of the insurer.

**c.          Each Party to be Prepared**

At the conference each plaintiff or party seeking affirmative relief or recovery shall be prepared to make his or her minimum request, and each defendant shall be prepared to make his or her highest offer.

In each case counsel who attend the conference shall be thoroughly familiar with the case and shall be prepared to discuss it.

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### **d. Settlement Statement**

It is mandatory that all parties or counsel shall, at least five (5) court days prior to the scheduled hearing, file with the Clerk of the Superior Court and serve on each party, a mandatory settlement conference statement containing the following:

- (1) The names of all parties, including intervenors and their representatives;
- (2) A detailed discussion of all facts and law pertinent to the issues of liability and damages involved in the case;
- (3) A good faith settlement demand and an itemization of economic and non-economic damages by each plaintiff;
- (4) A good faith offer of settlement by each defendant.

### **e. Participation in Good Faith**

For a meaningful conference, all attorneys and/or the parties must agree to participate in good faith. Any failure of an attorney to prepare for, appear at, and participate in a settlement conference, unless good cause is shown for any such failure, may be considered as an unlawful interference with the proceedings of the Court.

### **f. Failure to Appear**

If at the time of the scheduled settlement conference, plaintiff or those parties seeking affirmative relief fail to appear, the Court may order the trial date vacated and/or impose monetary sanctions. Written notice thereof will be mailed to all parties or their counsel of record as ordered by the Court. If the defendant or other responsible party fails to appear at the settlement conference and good cause is not shown, the Court may impose sanctions by way of costs, actual expenses, and counsel fees and order the case to proceed to trial on the date assigned.

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### **g. Failure of Settlement Conference**

In the event settlement negotiations are not successful, counsel should expect and be prepared to proceed to trial on the date scheduled. Every effort will be made by the Court to insure that the case goes to trial on the date scheduled.

### **h. Notice of Settlement or Dismissal**

If a case is settled or otherwise disposed of, the plaintiff must immediately file written notice of the settlement or other disposition with the court and serve the notice on any arbitrator or other court-connected ADR neutral involved in the case. If a hearing, conference or trial is imminent oral notice must be given to all of the above. The Court will impose sanctions for failure to provide it with timely notice of settlement.

A request for dismissal must be filed by Plaintiff within 45 days after the date of settlement unless the settlement agreement conditions dismissal on the satisfactory completion of terms that are not to be performed within 45 days of the settlement. If the settlement contains such terms, then the settlement must specify the date by which the dismissal is to be filed.

If plaintiff does not file a request for dismissal within 45 days after settlement or 45 days after the date set for dismissal, the court will either: 1) dismiss the case; or 2) Require Plaintiff or Plaintiff's counsel to appear and show cause why sanctions should not be ordered for failure to file the required request for dismissal.

*(Effective July 1, 2004).*

## **RULE 7: NOTICE OF STAY**

Any party who requests a stay must immediately file a notice of the stay and attach a copy of the order or document showing that the proceedings are stayed. If the person who requests the stay has not appeared or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of the stay and attach a copy of the

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order or other document showing the proceedings are stayed. This section applies to cases stayed for the following reasons:

- a. order of a Federal Court or higher State Court;
- b. contractual arbitration under section 1281.4 of the Code of Civil Procedure;
- c. arbitration of attorney fees and costs under section 6201 of the Business and Professions Code; or
- d. automatic stay caused by a filing in another court.

*(Effective July 1, 2004).*

### **RULE 8: PRE-TRIAL CONFERENCES**

#### **a. Pre-Trial Settings**

Except in cases assigned to one judge for all purposes, pre-trial conferences WILL NOT be set unless a party, at the Case Management Conference, files a declaration setting forth facts indicating that a pre-trial conference is justified and the designated court official so finds and orders.

#### **b. Pre-Trial Conference Procedure**

1. The parties shall confer before the date assigned for a pretrial conference to reach agreement upon as many matters as possible and shall prepare jointly, or each shall prepare, and submit before the conference, a written statement of the matters agreed upon.

2. The parties shall be prepared to respond to any inquiry by the designated court official as to the possibility of a settlement of the case.

*(Effective July 1, 2004).*

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**RULE 8.1: PREPARATION OF ORDER AFTER HEARING**

Unless the court orders otherwise or prepares the order after hearing on its own, the prevailing parties shall prepare a written order following any hearing on the Law and Motion calendar.

If the prevailing party does not prepare an order after hearing within 10 days of the hearing and does not communicate the reason for the delay to the other party, then the other party may prepare the order and process it.

*(Effective July 1, 2004).*

**RULE 9: JURY TRIALS (Civil)**

**a. Deposit, Forfeiture & Return of Jury Fees**

The deposit of advance jury fees, and of daily fees and mileage, shall be made as required by California Code of Civil Procedure section 631. The clerk shall not accept a deposit sought to be made fewer than 25 days before the date set for trial (5 days in unlawful detainer cases). If a balance of monies remains after trial or disposition, that amount shall be returned to the depositing party. If the monies on deposit are not sufficient to cover the daily costs of trial jurors, the Court shall notify the depositing party that there is a balance due and owing, and the party shall deposit that amount forthwith with the Court.

**b. Failure to Post**

Failure to deposit advance or daily fees as required will be deemed a waiver of trial by jury and the Court, in its discretion, may proceed to trial without a jury, dismiss an empanelled jury, or upon such terms as may be just, proceed with a jury.



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**c. Payment for Food, Lodging and Other Expenses**

In a civil action in which a jury has been sworn, the expenses for food, lodging and other reasonable necessities which are incurred shall be borne by the depositing parties. Before any such expenses are incurred, the Court Clerk at the trial shall require the depositing parties to advance such sums of money as the Court deems reasonably necessary in order to pay for the anticipated expenses, but in no event less than \$125.00 per panel meal. The money so advanced shall be deposited with the daily jury fees on the last day of the trial prior to the deliberation by the jury. Any surplus amount of money remaining after said expenses have been paid in full shall be returned to the payor. If a depositing party fails, upon the request of the Court, to advance such necessary expense money, the Court, will forthwith consider whether to dismiss the jury and proceed as if no jury had been selected and sworn.

**d. No Jury Trials Scheduled for Certain Holiday Weeks**

No jury trials will be scheduled for the week in which the Thanksgiving holiday falls. In any year in which the Christmas holiday falls on a Tuesday, Wednesday, or Thursday, no jury trials will be scheduled for that week.

**e. In Limine Motions**

1. The following motions In Limine are deemed granted. Written motions should not be submitted on these issues:

- (a) Motion excluding evidence of collateral source;
- (b) Motion excluding evidence of, or mention of, insurance coverage;
- (c) Motion excluding experts not designated pursuant to Code of Civil Procedure § 2034;
- (d) Motion excluding offers to settle and/or settlement discussions.

## MERCED COUNTY SUPERIOR COURT

2. All other motions in limine shall be filed and served on opposing counsel no later than 4:00 p.m., six (6) court days prior to the trial call date. Written opposition to in limine motions, if any, shall be filed and served on opposing counsel no later than 4:00 p.m., three (3) court days prior to the initial trial call date. Failure to submit written opposition to in limine motions will not preclude oral opposition to the motions at the time of trial.

3. Motions in limine shall be limited in scope in accordance with Clemens v. American Warranty (1987) 193 Cal.App.3d 444, 451, i.e., those pertaining to evidence where attempts to “unring the bell” would be unduly prejudicial or futile. Motions for judgment on the pleadings, leave to amend or bifurcation are not in limine motions within the scope of this order.

4. Motions in limine shall be prepared in the form prescribed as follows: The title of each in limine motion shall identify the moving party and describe the nature of the motion, and shall be numbered sequentially, indicating the total number of in limine motions submitted by the moving party. Example: “Plaintiff JANE DOE’S Motion In Limine to Exclude the Testimony of Joe Expert [No. 1 of 6].” Written opposition to in limine motions, if any, shall identify both the party filing the opposition, and the specific motion which is being opposed by name of moving party and motion number. Example: “Defendant RICHARD ROE’S Opposition to Plaintiff JANE DOE’S Motion In Limine No. 1.” (*Effective July 1, 2004*).

### **RULE 10: JURY INSTRUCTIONS (Civil)**

#### **a. Use of Pre-Approved Instructions**

To the extent possible parties must use instructions promulgated or sponsored by the California Judicial Council.

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**b. Service of Jury Instructions**

At the commencement of trial in all civil jury matters, counsel shall serve upon all other parties participating in the trial and deliver to the trial judge a written request captioned in the action and entitled “Instructions Requested by (name of party),” to which shall be attached an edited copy of all instructions requested, with one instruction per page and a five-inch margin at the top of the page which may, however, include typical CACI headings, which will not be read to the jury. The parties may submit additional typewritten or printed instructions which shall contain the authorities relied upon, shall be sequentially numbered and shall follow standard CACI format. The parties should be prepared to provide to all jurors and alternates a copy of all written instructions, if so required by the trial judge.

*(Effective July 1, 2004).*

**RULE 11-12: RESERVED**

**RULE 13: TOXIC AND HAZARDOUS MATERIALS**

Prior to bringing any toxic hazardous or potentially hazardous materials into the courtroom, counsel shall provide to the court a written statement containing information as hereinafter set forth:

- (1) A list of the technical and street names of the said materials.
- (2) The types and sizes of the containers to be utilized for the materials.
- (3) The name of the person who will transport the materials into the courtroom.
- (4) Where the materials will be stored, and the conditions under which the materials will be stored, viewed or handled.
- (5) The name of the person who will remove the materials.
- (6) An explanation as to why the material is hazardous or potentially hazardous and the remedies to be followed in the event of a spill, leak or other accident.

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- (7) An explanation as to why the introduction of the materials into evidence must be accomplished by their physical presence in the courtroom, rather than proof of their existence by any other method.

Toxic, hazardous or potentially hazardous materials shall include, but not be limited to, all chemicals, pesticides, and explosives, other than ammunition. A comprehensive list of these materials is contained in the California Code of Regulations, Title 8, Section 339(3), entitled The Hazardous Substance List. Any further information concerning the list of materials provided in the aforementioned California Code of Regulations or additional information concerning other hazardous materials may be obtained by contacting the Merced County Department of Environmental Health.

This rule is made for the protection of the public and all persons involved in the processes of the justice system of Merced County.

*(Effective July 1, 2004).*

**RULE 14: RESERVED**

**RULE 15: WITHDRAWAL OF STIPULATION TO COMMISSIONER**

Any withdrawals of a stipulation to a Commissioner must be made five (5) days prior to a hearing or trial if the Commissioner is known at least ten (10) days before such hearing or trial.

*(Effective July 1, 2004).*

**RULE 16: CRIMINAL RULES**

**a. Criminal Calendar**

All criminal matters shall be heard per the court's published calendar. (See court's website [www.mercedcourt.org](http://www.mercedcourt.org) or contact Court Administrator's Office).

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**b. Writ of Habeas Corpus**

The Clerk shall not file any petition for writ of habeas corpus that is not accompanied by a complete copy including any exhibits, attachments or other materials sent with the original. All the papers shall be returned to the petitioner with the admonition to comply with this rule if the petition is resubmitted.

**c. Request For Search and Arrest Warrants**

During court hours all requests for search warrants or arrest warrants may be submitted to any available judge.

**d. Discovery**

All parties shall comply with Penal Code Sections 1054-1054.9.

**e. Stipulated Discovery Order**

All parties shall comply with the Stipulated Order re Discovery in Felony Cases filed April 12, 2000 (posted in Clerk's Office) unless an exception is requested at formal arraignment. (See court's website to view document).

**f. Minute Orders (Cases Where Minute Orders Prepared by the Clerk Immediately After Case is Concluded and Delivered in Court)**

1. Immediately upon the conclusion of every felony case scheduled for an arraignment, bail review hearing, pre-preliminary hearing or preliminary hearing, the Courtroom Clerk shall cause a copy of the minute order or probation order to be hand-delivered to the deputy public defender or defense attorney and the deputy district attorney who are present and appearing as attorney of record.

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2. Prior to delivering copies of the minute order as set forth above, the Judge and Clerk shall make sure the information on the minute order is correct.

3. The deputy district attorney, deputy public defender or defense attorney shall, before leaving the courtroom, determine if the following information in the order is correct:

- a. Date and time of next court appearance; if any.
- b. Purpose of next court appearance.
- c. Own Recognizance Release status.
- d. Custody and bail amount.
- e. The terms of probation, if applicable.

4. If an attorney determines that any of the information in #3 is not correct, the attorney shall immediately advise the judge and clerk.

5. If the judge agrees that any of the information in #3 is not correct, the judge and clerk shall immediately correct the minute order.

6. This standing order shall also apply to any misdemeanor offense which involves violence or a threat of violence where attorneys of record are present.

**g. Tape Recordings**

No audio tape recording shall be marked for identification, admitted as an exhibit, or played before the Judge or jury unless the proponent thereof first provides the Court and opposing counsel with a written transcript of the tape recording.

**h. Jury Instructions**

Counsel shall file, before 4:00 p.m., on the first day of trial, a list of CALJIC instructions requested. If any proposed additional instructions are requested they shall be submitted in writing with authorities placed at the top of the writing.

## MERCED COUNTY SUPERIOR COURT

### **i. Felony Bail Schedule**

The Judges shall adopt a Felony Bail Schedule for use by the Court and Merced County law enforcement agencies.

### **j. Notice of Motion**

The notice of motion designating a motion pursuant to Penal Code Section 1538.5 shall specifically describe and list the evidence which is the subject of the motion to suppress; and shall specifically state the theory or theories which shall be relied upon and urged for the suppression of evidence; and cite the specific authority or authorities which will be offered in support of the theory or theories upon which suppression of the evidence is urged.

*(Effective July 1, 2004).*

## **RULE 17: COURT EXECUTIVE OFFICER**

Pursuant to Government Code § 69898, the Court Executive Officer, under the discretion of the Presiding Judge, shall exercise all of the powers, duties and responsibilities as Clerk of the Merced County Superior Court. These powers, duties and responsibilities shall include all of those previously performed by the County Clerk as Ex Officio Clerk of the Merced County Superior Court, and those pertaining to the Grand Jury prescribed by Penal Code §§ 900 and 933. Pursuant to Government Code § 26800, the County Clerk is hereby relieved of any obligation imposed by law with respect to these powers, duties and responsibilities. Pursuant to Government Code § 69893 and Code of Civil Procedure § 195, the Court Executive Officer shall also serve as Jury Commissioner.

The duties of the Court Executive Officer shall include, but are not necessarily limited to, those set forth in California Rules of Court Rule 207 and such other duties as may be assigned by the Presiding Judge. The Court Executive Officer shall be

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responsible for the selection, retention and direction of all non-judicial personnel of the court. The Court Executive Officer shall be an exempt employee whose selection shall be recommended by a majority of the Executive Committee and approved by a majority vote of all Merced County Superior Court Judges, who may be terminated by a majority vote of all Merced County Superior Court Judges. The Court Executive Officer shall serve as a non-voting member of the Executive Committee and shall serve as secretary. The secretary is responsible for conducting all elections and counting all votes.

*(Effective July 1, 2004).*

### **RULE 18: COURT COMMISSIONERS**

Court Commissioners shall be exempt employees who shall serve at the pleasure of the judges of the Merced County Superior Court. They shall be selected by the Executive Committee and may be terminated by a majority of all Merced County Superior Court Judges.

*(Effective July 1, 2004).*

### **RULE 19: NOTICE TO APPEAR PURSUANT TO V.C. § 40500**

Pursuant to California Vehicle Code Section 40902, the court hereby provides that a defendant may elect to have a trial by declaration upon any alleged infraction involving a violation of the California Vehicle Code or any local ordinance adopted pursuant to said code. Testimony and other relevant evidence may be introduced in the form of a notice to appear issued pursuant to Vehicle Code Section 40500, a business record or receipt, a sworn declaration of the arresting officer, or a written statement or letter signed by the defendant. A request for trial de novo pursuant to Vehicle Code Section 40902(d) must be filed no later than twenty (20) days from the date of mailing of the court's original decision. *(Effective July 1, 2004).*



**MERCED COUNTY SUPERIOR COURT**

**RULE 20:    RESERVED**

**RULE 21:    APPELLATE DEPARTMENT**

**a.       Sessions**

Regular sessions of the Appellate Department shall be held on the fourth Monday of each month at 1:15 p.m., unless that day falls on a holiday in which event the session shall be held on the third Monday of that month at 1:15 p.m. Special sessions shall be held at the call of the Presiding Judge of the Appellate Department. All sessions shall be held in Department III.

**b.       Calendaring**

Immediately upon the filing of the record on appeal in the Court, the Clerk shall set the case for oral argument on the next regular session which allows the parties time to comply with the briefing schedule set forth in Rule 105, subdivision (a), California Rules of Court.

**c.       Appeal in a Misdemeanor Case**

California Rule of Court 187.5 shall apply in every appeal in a misdemeanor case in which all or part of the proceedings were officially recorded electronically.

*(Sub. (c) amended effective January 1, 2006)*

**d.       Briefs**

Briefs shall be prepared, served and filed as provided by Rule 105, California Rules of Court. Counsel shall also deposit with the Clerk three (3) legible copies for the assistance of the members of the Court. The Clerk shall not file any brief which does not conform to the rules or which is tendered for filing after the time fixed by that rule or by an order extending the time for filing.

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**e. Motions**

All requests for relief from any default shall be heard at a regular session, unless a different time for the hearing is designated by the Presiding Judge of the Appellate Department. Requests for extensions of time for filing briefs or for continuances of a hearing, which are timely filed, may be granted by the Presiding Judge of the Appellate Department or set by him or her for consideration at a regular or special session.

**f. Oral Argument**

Unless otherwise ordered, counsel for each party shall be allowed fifteen (15) minutes for oral argument. The appellate or the moving party shall have the right to open and close.

*(Effective July 1, 2004).*

**RULES 22-199:     RESERVED**

**RULE 200:   PROBATE RULES – PREFACE**

It is not the court's intent in adopting these rules to cover every anticipated question or concern, but rather to provide a few additional guidelines which are considered important for local practice. Nor does the Court intend these rules to be a research tool. The Probate Department of the Merced County Superior Court encourages the use of the Probate Code, California Rules of Court, Judicial Council forms, and the publications of the Continuing Education of the Bar as valuable guidelines and references with respect to local practice.

Unless stated otherwise, all references in this Rule are to the California Probate Code.

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### **a. Time and Place of Hearing**

All uncontested probate hearings and contested matters which are not expected to exceed twenty (20) minutes in length shall be set at 8:30 a.m. on Monday – Thursday. All hearings which are likely to exceed twenty (20) minutes in length should be set at 10:00 a.m., on a Monday.

### **b. Applicable Rules**

Except as otherwise provided in these rules, all provisions in the local general and civil law and motion rules apply to probate proceedings.

### **c. Appearances**

1. There is no Probate Commissioner or Examiner in Merced County. Tentative rulings are not given.

2. Appearances are required on all petitions for appointment of conservators, and/or guardians and confirmation of sale of real or personal property and on any petition to which objections are filed.

3. If the moving party does not appear on any calendared matters, cases involving issues which are incomplete or questionable may be continued one to two weeks or may be dropped from calendar, depending on the circumstances.

4. See **Rule 4d** for telephone appearances.

### **d. Forms Approved by the Judicial Council**

All probate forms printed and approved by the Judicial Council are mandatory in Merced County. Failure to use such forms may result in the Clerk's refusal to file a submitted document.

## MERCED COUNTY SUPERIOR COURT

### **e. Orders**

Except in the case of confirmation of sales, contested matters and orders requiring information from a governmental agency, the moving party shall submit the proposed order at least three (3) court days prior to the hearing date. Orders shall have the scheduled hearing date, time, and department noted on the face sheet below the title of the document.

### **f. Appointment of Representative(s)**

1. Where a petition seeks the appointment as personal representative of a person or persons other than the petitioner, a written consent to serve as personal representative must be filed for each such proposed personal representative.

2. Each personal representative must execute and file an acknowledgement of receipt of Judicial Council Form “Duties and Liabilities of Personal Representative” (From DE – 147) before the court issues letters.

### **g. Notices**

1. In a petition for probate of a will, all persons and organizations named in the will or codicils shall be listed.

2. If a named devisee predeceased the decedent, that information must be provided in the notice. In cases where the devisee dies after the decedent, the date of death must be stated and notice must be mailed in care of his or her personal representative if one has been appointed, or alternatively, to another appropriate representative.

3. A declaration specifying good faith efforts to identify and locate heirs or beneficiaries is required where the petitioner cannot determine the name or address of an heir or beneficiary to whom notice is required.

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4. If there are no known heirs of the decedent and no heirs of a predeceased spouse pursuant to Section 6402.6, a declaration to that effect shall be filed setting forth the basis for the declaration and the efforts made to locate all such heirs.

5. The trustee of a living trust who is a beneficiary of a will shall be listed as a devisee and noticed.

6. The Clerk does not handle the preparation, mailing or publication of notices. Notices must be prepared and submitted at the time of filing the applicable petition, and the moving party is responsible for all required mailings and newspaper publications.

**h. Defective Notice**

If the publication is correct but the mailing is defective, the hearing normally will be continued to allow enough time for the mailing of the required amended notice, and republication is not required. If the mailing is correct but the publication is defective, the matter must be taken off calendar and a new notice must be given by publication and mailing.

**i. Bond**

1. Pursuant to Section 10453, if a bond is otherwise required, if full authority under the Independent Administration of Estates Act (IAEA) is sought, and if the personal representative at the time of the initial petition for probate intends to sell real property through a notice of proposed action (without court confirmation), the latter fact shall be stated in the petition to enable the court to determine whether the initial qualifying bond should be fixed to include anticipated proceeds from the sale of real property.

2. Every person appointed as personal representative shall give a bond approved by the court before letters are issued unless otherwise waived in the will or in writing. If 2 or more persons are appointed the court may require a separate bond from each or a

## MERCED COUNTY SUPERIOR COURT

joint and several bond. If a joint bond is furnished, the liability on the bond is joint and several.

3. If written waivers are attached to the petition, bond will be waived by the court pursuant to Section 8481, provided all heirs or beneficiaries are competent to act. If any such person is incompetent (e.g. minors) an appropriate representative is required to waive bond on behalf of such person. This section does not apply if the will requires a bond.

4. A personal representative who is a non resident of California and who is nominated to serve without bond, still may be required to post such bond as the court may require, where good cause of such a requirement is shown.

5. If the will names two or more persons to serve as executors but not all serve and the will does not expressly waive bond if fewer than all serve, the court shall require each executor to give a bond unless the court waives this requirement under Probate Code section 8481(a)(2).

6. It is the duty of the fiduciary or fiduciary's attorney, upon becoming aware a bond is insufficient to immediately apply for an order increasing the bond. Such application accompanied by a proposed order, may be made ex parte. See CEB publications for forms.

### **j. Creditor's Claims**

1. Creditors shall file their claims with the Clerk's office and mail a copy to the personal representative. The disposition of all such claims must be reported to the court on the Judicial Council "Allowance or Rejection of Creditor's Claim" form, prior to any distribution. This requirement also applies to fiduciaries acting under the IAEA.

2. If the personal representative is acting under the IAEA, the court will not review the personal representative's allowance or rejection of a creditor's claim unless good cause is shown, except as to claims of the personal representative or the attorney.

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All claims of the personal representative or the attorney must be submitted to the court for approval.

*(Effective July 1, 2004).*

**RULES 201-299:     RESERVED**

**RULE 300:   PETITION FOR APPROVAL OF MINOR'S COMPROMISE**

**a.     Contents of Petition**

A petition for court approval of a compromise or covenant not to sue under the Probate Code or CCP 372 must be verified by Petitioner and contain a full disclosure of all relevant information bearing upon the reasonableness of the compromise, including:

- (1)     Name, birthdate, age and sex of minor;
- (2)     An account of the facts and circumstances which gave rise to the claim or injury;
- (3)     A description of the nature and extent of the injury and whether it is permanent or temporary;
- (4)     All doctors reports containing a diagnosis, prognosis and present condition of the claimant;
- (5)     Where payment for medical treatment is sought all medical expenses, insurance payments and net amounts owed to each provider;
- (6)     The amount of attorney fees, their basis and an itemization of costs;
- (7)     The gross and net amount of the proposed settlement;
- (8)     How the proceeds of the settlement will be distributed;
- (9)     Amounts paid to other claimants;

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(10) Whether or not the petitioner is a plaintiff in the same action as the minor or a claimant against the recovery, and if so whether the pendency or disposition of petitioner's claim has affected the minor's compromise;

(11) If settlement money is to be deposited in an account subject to withdrawal only upon order of the court, the name and address of the depository;

(12) Whether notice pursuant to Welfare and Institutions Code Section 14124.73 has been given;

(13) If an order for payment to special needs trust is requested, a statement of the method by which all statutory liens will be satisfied under Probate Code 3604.

### **b. Attorney Disclosure**

If the petitioner has been represented or assisted by an attorney the petition must disclose the name, state bar number, law firm and business address of the attorney. It must also disclose whether the attorney became involved at the instance of any party against whom the claim is asserted, or an insurance carrier employed by any other party. If any fees or other compensation has been paid the petition must disclose who paid those fees or other compensation; if no fees have been paid, then whether the attorney expects any fees and if so the amount and who will pay them. The terms of the agreement between the petitioner and the attorney must also be set forth in the petition.

### **c. Personal Appearance**

The person compromising the claim and the minor must attend the hearing unless the court, for good cause, dispenses with the requirement of personal appearance.

### **d. Attendance of Witnesses**

The court may require witnesses, including the treating physician, to attend the hearing.



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### **e. Withdrawal of Funds**

A petition for withdrawal of funds from the account may be considered ex parte or set for hearing at the discretion of the court. Parents are advised that monies in blocked accounts are not available for payment of services ordinarily provided by parents.

*(Effective July 1, 2004).*

## **FAMILY LAW**

### **GENERAL POLICY STATEMENT**

It is the policy of the Merced County Superior Court to manage all family law cases from the time the first order to show cause or at issue memorandum is filed, to focus on settlement at the earliest possible date, to reduce the cost of litigation and to reach a fair and final resolution of the case expeditiously. These rules are intended to provide generally uniform practice and procedures among departments involved in family law matters in Merced County. Due to often unique facts or procedural inconsistencies, these rules should be considered as guidelines to which the Court will generally adhere.

### **RULE 401: MATTERS ASSIGNED TO THE FAMILY LAW DEPARTMENT**

All proceedings filed in the following matters are currently assigned to the Family Law Department:

- A. Matters arising from the California Family Code, including cases where the Local Child Support Agency appears on behalf of the County of Merced or any party.
- B. Matters arising from the Uniform Divorce Recognition Act, Family Code §§2090-2093.
- C. Matters arising from the Uniform Child Custody Jurisdiction Act, Family Code §§3400-3425.
- D. Matters arising from the Uniform Parentage Act, Family Code §§7600-7643.
- E. Matters arising from the Domestic Violence Prevention Act, Family Code §§6200-6305.

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F. Matters arising from the UEIFSA provision of the Family Code and orders to show cause, motions, or trials in actions brought by the Local Child Support Agency under the provisions of Family Code Sections 17000 et. seq.

G. Matters arising from Family Code §§4900-4903, Support of Adult Child(ren) or Parents.

H. Post-dissolution judgment actions, involving omitted or reserved property issues.

I. Non-marital property right actions consolidated for trial with Family Code, except those cases in which a jury trial has been demanded.

J. Mediation proceedings in Guardianship actions.

*(Effective July 1, 2004).*

### **RULE 402: MOTIONS AND ORDER TO SHOW CAUSE CALENDER**

#### **a. Calendar Management Short and Long Cause Matters**

1. Short Cause matters are those matters requiring no more than 15 minutes of the Court's time. Counsel shall be prepared to present their case based upon pleadings, declarations, and offers of proof. Counsel shall be prepared to explain why any live testimony is necessary. Generally no live testimony is allowed in Short Cause matters pursuant to CRC 323 and Reifler v. Superior Court (1974) 39 Cal.App.3d 479. Short Cause matters shall be set for hearing on Tuesdays, Thursdays or Fridays at 8:15 a.m. or on Tuesdays or Fridays at 1:30 p.m..

2. Long Cause Matters are those matters requiring more than 15 minutes of the Court's time. The long cause calendar shall be heard on Mondays at either 8:15 a.m. or 1:30 p.m. Counsel shall meet and confer prior to the call of the case and determine if the anticipated hearing time exceeds 15 minutes. If both concur they shall appear in court and obtain a long cause date. If the time estimate of either party is exceeded, the Court may in its discretion, rule without further hearing; defer the matter to the end of the calendar if time permits, continue the matter to the next available date or order the matter off calendar.

3. Only matters involving two self-represented parties shall be set on Wednesdays at 8:15 a.m.

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4. All case management conferences shall be heard in chambers as set by the Court.

*(Effective July 1, 2004).*

### **RULE 403: REQUEST TO READ FILE**

A party that desires that the court read a particular pleading shall make such request prior to or at the commencement of the hearing. Absent such a request the court will not review the file prior to the hearing. This is requested as a courtesy and the court will review the file as necessary to make a proper decision, regardless of compliance.

*(Effective July 1, 2004).*

### **RULE 404: NOTIFICATION OF OTHER PROCEEDINGS**

Any moving or responsive papers involving children or domestic violence shall contain a statement notifying the Court of any action pending or jurisdiction being exercised by any other Court involving the same parties and/or children. Such information shall include the name and location of the court, the file number therein, the statutory basis for said action and a copy of the most recent order made in the action.

*(Effective July 1, 2004).*

### **RULE 405: TIME LIMITATIONS OF FILING MOVING PAPERS**

Absent any provision in the law or an order shortening time, any declarations, or points and authorities by the moving party, including any required notice to the Local Child Support Agency, shall be served pursuant to law and filed no less than 21 Court days prior to the date of hearing. Unless good cause is shown, failure to comply with this rule may result in the refusal by the Court to consider any papers not timely filed, or the imposition of monetary sanctions on counsel, or both.

*(Effective July 1, 2004).*

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**RULE 406: CONTINUANCES**

If a motion for continuance is to be made the matter must be placed on calendar no less than five (5) Court days prior to the scheduled event along with payment of the filing fee.

*(Effective July 1, 2004).*

**RULE 407: LACK OF APPEARANCE OR TARDINESS**

A. Failure of the moving party or attorney to be present at the calendar call, or to have informed the court staff of his/her presence in another department, may result in the matter being removed from the calendar and, if the responding party has appeared, attorney's fees and costs may be awarded to the appearing party.

B. In the event the responding party or attorney fails to appear, the Court may continue the matter and award attorney's fees, or enter an order on the pleadings and the declaration or testimony of the moving party.

C. If, for any reason, the attorney or client is unable to be present at the time of the calendar call, the Court and opposing party shall be notified as soon as possible in person or by phone of the reasons for, and the extent of, such delay.

*(Effective July 1, 2004).*

**RULE 407.1: COURT CALL APPEARANCES**

Except in contempt and work search orders to show cause where appearances are mandatory or unless otherwise ordered by the court, arrangements can be made through the Family Law clerk's office for an appearance by court call. Arrangements to appear by court call must be made at least 5 days prior to the date of appearance. Court call requires a fee be paid to court call unless a fee waiver is on file. Hearings on 8:15 a.m. or 1:30 p.m. calendars will be moved to 10:00 a.m. or 3:00 p.m. respectively if there is a court call request.

*(Effective July 1, 2004).*

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**RULE 408: PRE-HEARING SETTLEMENT EFFORTS**

A. When the attorneys have informed the Court staff that they are conducting settlement, neither the attorneys nor the parties need be present at the calendar call and the matter will remain on calendar until heard, or otherwise disposed.

B. Copies of documents, intended to be offered as part of a case in chief, shall be provided to opposing parties at least two days prior to the Court hearing or as soon as information is available. A party may not wait until the time of the hearing to "surprise" the opposing party with proffered documentary evidence, except to impeach the veracity of a party or witness. If evidence is offered at a hearing without notice, it may constitute cause for a continuance and sanctions.

C. If a case is settled after calendar call but before the hearing, one of the attorneys shall inform the Judge or Court staff of that fact, whereupon the stipulation will be taken ahead of all contested matters. No party shall represent that a case is settled when there is "only one" issue remaining to be determined by the Court.

*(Effective July 1, 2004).*

**RULE 409: RULES GOVERNING CUSTODY AND VISITATION ISSUES**

**a. General**

1. When a **Notice of Motion** or **Order to Show Cause** is filed, the Clerk will generally assign two court dates. The first date is **Orientation** and the second date will be a court hearing. Orientation is always conducted on Wednesday at 12:15 p.m. and generally lasts up to 90 minutes. The clerk will assign a Mediation date at the conclusion of Orientation. Mediation days are Mondays, Wednesdays and Thursdays with the calendar commencing at 9:00 a.m..

2. Attendance at Orientation is **mandatory**. However, attendance can be waived if the parties have attended mediation in the last 12 months or they live more than 250 miles from Merced and they obtain an Order from the court relieving them of their obligation to attend because one or more circumstance applies. If either of these circumstances apply and a party wishes to obtain a waiver of the obligation to attend Orientation they must complete the Merced County Local form, a copy of which is

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reproduced in Appendix A attached hereto, and submit the form to the Clerk's office at least five calendar days prior to the scheduled Orientation.

3. If Orientation has been waived (by completion of the local form and signed by the Judge) the Clerk will assign a Mediation date at Orientation. If one party is excused from attendance at Orientation, the other party is not automatically excused and must attend Orientation. A Mediation date will be assigned at the time scheduled for Orientation whether one or both parties have been excused from attending Orientation. Any party excused from attending Orientation shall be obligated to contact the Clerk's office after the scheduled Orientation date to obtain the date and time set for Mediation of the matter. Failure to do so, resulting in a failure to appear at the time Mediation is scheduled, may result in a monetary sanction being ordered against the party failing to contact the Clerk.

4. The further court hearing will cover custody, visitation and all other issues brought up in the original Motion.

5. Counsel shall not participate in mediation. However, counsel shall have the right to be present, and review any agreement prior to being signed by his or her client.

6. If the parties reach an agreement at Mediation regarding custody and visitation, that agreement will be adopted by the court immediately following the mediation.

7. If the parties do not reach an agreement at Mediation, the Mediator will make a recommendation to the court which they feel is in the best interests of the children. The recommendation will also contain a separate rationale, which will be contained in a confidential envelope subject to the same review provisions set forth in sub-section I, here below. This recommendation will be available 1 to 2 days after mediation and can be picked up at the Clerk's office for review. At the further hearing the Court will generally:

1. Use the Mediator's recommendation as a guideline in making temporary or permanent orders; and/or
- 2) Order a Merced County Family Court Services Assessment (short evaluation),
- 3) Order a Merced County Family Court Services extended evaluation,
- 4) Appoint minor's counsel or

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5) At the parties' request, appoint a private evaluator to do an extended evaluation.

**b. Cost of Evaluations/Minor's Counsel**

1) If a Merced County FCS Assessment is ordered, the fee, effective April 1, 2004, shall be \$550. This amount is subject to review by the court, with any changes to be posted in the Family Law clerks office. Each party shall be responsible to pay one half of this amount, with the court reserving jurisdiction to reallocate the fee in future court proceedings.

2) If a Merced County FCS Evaluation is ordered, the fee, effective April 1, 2004, shall be \$1500. This amount is subject to review by the court, with any changes to be posted in the Family Law clerks office. Each party shall be responsible to pay one half of this amount, with the court reserving jurisdiction to reallocate the fee in future court proceedings.

3) The following standard orders shall apply to all FCS assessments and evaluations ordered by the court:

(a) Each party will be ordered to report forthwith to the Merced County Department of Revenue and Reimbursement for payment of their one-half the fee. The department will charge a 15% payment fee if arrangements are made for payments (this additional charge will not be required if payment of the one-half is made in full). The evaluation or assessment will commence only after one-half of the full cost is made. Any balance owing is deemed Child Support for purposes of collection.

(b) The parties are ordered to make themselves and any children available for all appointments as scheduled for the evaluation or assessment, and shall promptly provide the evaluator with any documentation or information as requested. The evaluator

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may make an ex-parte request to the court for a drug testing if an issue arises regarding alleged drug use. The parties are to comply with such order as directed by the evaluator, and be responsible to make payments directly to the lab as ordered. The standard order in this regard is that the parent requesting the testing shall pay the initial cost, with the cost reimbursed by the other party if the test is positive.

4) Unless otherwise ordered by the court, on approval of the Presiding Judge, all appointments of minor's counsel under Family Code section 3150 will be subject to the parties making arrangements for fees directly with the appointed counsel.

5) Private evaluations will be subject to fees and arrangements made directly to the evaluator, subject to allocation by the court. The court will generally order the party requesting the private evaluation to pay the portion of the fee that exceeds the one-half amount of the cost of an FCS evaluation.

**c. Filing Rationale and Recommendation/Objections/Further Hearing**

1) There will generally be no follow up hearing set if an assessment, evaluation, or minor's counsel is Ordered.

2) The evaluator (Merced County FCS or privately retained) or minor's counsel will be directed to prepare a report and recommendation and file it with the Court. This report will be submitted in two (2) parts. The first part will be the evaluator/minor's counsel rationale which will be maintained in a confidential envelope. The second will be the evaluator/minor's counsel's recommendation.

3) The parties and/or their attorney of record will receive only the evaluator's/minor's counsel recommendation. The confidential rationale or report shall be subject to the right of the parties to review it in the clerks office. Counsel for the parties shall be given a copy, however they are ordered not to make additional copies and are responsible for maintaining control of the rationale or report, although they may review it with their client, unless pursuant to court order. The mediator or evaluator may also prepare a separate report regarding confidential statements of the minor child or



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children, which report shall not be reviewed by counsel or parties without a court order. If the parties wish to obtain a copy of the rationale they must complete the Merced County local form set forth in Appendix B and submit same to the clerk's office. Upon the Judge's approval of release of the rationale the parties or their attorney may review the report and release same **only** to the extent ordered by the Judge.

4) Each party will have 20 days from the certification of mailing of the recommendation to file an objection to same. The parties shall use the Merced County local form set forth in Appendix C to set forth any objections they have to the recommendation. If no objection is timely filed by either party, the Court will adopt the recommendation as an Order of the Court.

5) If an objection is filed, the matter will be set on the Court's calendar by the Court Clerk and the parties or their attorney of record, will be notified of same by notice sent to them by the Clerk via United States mail to their last known address indicated in the court file.

### **d. Minor's Counsel**

1) The appointment of counsel to represent children in Family Law cases is authorized by Family Code Section 3150.

2) After appointment Minor's counsel shall be notified and prepare orders which shall include the statement that Minor's counsel may directly contact the parties, represented or not.

3) No mediation shall be held after the appointment of Minor's counsel except on motion and approval of the court. After custody and visitation is decided upon a report by Minor's counsel, no further motions involving custody and/or visitation shall be held without approval of Minor's counsel. Any party, upon 10 days notice, may seek court approval to have the matter heard without Minor's counsel approval. The purpose of this rule is to encourage the parties to reach an agreement with Minor's counsel's assistance and without the need for a court hearing.

### **e. Disqualification of Mediator or Minor's Counsel/Conflict of Interest**

1) There is no peremptory challenge to a Mediator or Minor's counsel.

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2) A Mediator/Minor's counsel can be disqualified for good cause. Any party wishing to challenge a Mediator or Minor's counsel for cause shall complete the Merced County local form set forth in Appendix D as soon as they first become aware of the conflict of interest or other cause which is the basis of the challenge. Same shall be submitted to the court for review and approval. Upon approval of any challenge the court will appoint an alternate Mediator or Minor's counsel for the matter.

3) All Family Court Services staff shall disclose any **known** actual or potential conflicts of interest at the first Mediation or meeting with the parties. These conflicts shall be resolved by the Court through the procedure indicated in Rule 109 J.2 herein above or the Mediator or Minor's counsel shall recuse him or herself before Mediation/Evaluation begins or before Mediation/Evaluation continues in the case where the conflict arises during the course of the Mediation/Evaluation.

### **f. Mediator's Motion**

Upon meeting with the parties, the Mediator has the authority to make an ex-parte request to the court seeking:

- 1) temporary Orders for the protection of the child or children involved;
- 2) a more extensive evaluation/investigation be ordered or
- 3) release of records from Child Protective Services, law enforcement agencies, medical providers for the child or any and all other reports, records, or other tangible documents previously made relating to the issues of custody and visitation. Any Order made upon the Mediator's request shall be immediately served on the parties or their attorney by the clerk's office. Any party objecting to same may file an ex-parte Motion with the court seeking review and modification of any such Order made.

### **g. Child Advocate Motion**

When the Child Advocate Program of Merced County ("CAPS") has been appointed to supervise visits in a case, they shall have the authority to make an ex-parte request to the court seeking the termination of visits for a parent and/or the appointment of Minor's counsel for the child or children involved if they feel such a request is necessary for the protection of the child or children involved. Any Order made by the court upon such a request by CAPS will be immediately served by the Clerk on the

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parties and/or their attorneys notifying them of the action taken by the court. Any party objecting to same may file an ex-parte Motion with the court seeking review and modification of any such Order made.

*(Effective July 1, 2004).*

**RULE 410: EX PARTE ORDERS**

A. Ex parte Order to Show Cause Motions shall be presented to the Clerk of Court no later than 11:30 a.m. on the day prior to the requested hearing.

B. No ex-parte hearing will be set unless the appropriate filing fee is paid at the time the request is made to place the matter on calendar.

C. No ex-parte hearing will be set unless the Merced County local form titled “Declaration Re: Notice Upon Ex Parte Application for Orders” (a copy of which is set forth in Appendix “E”) has been filed with the Clerk’s Office.

D. Ordinarily, an ex parte order will not be issued unless one of the following conditions exists:

1) Notice was given to the adverse party by at least noon on the day preceding the hearing so that adverse party has an opportunity to oppose the application by counter declarations filed with the clerk as soon as possible or to appear at the time of the hearing; or

2) Reasonable good faith efforts were made to notify the party; or

3) It clearly appears in the declaration that giving notice would frustrate the purpose of the proposed orders; or

4) The applicant would suffer immediate and irreparable injury before the adverse party could be heard in opposition; or

5) It appears by declaration that no significant burden or inconvenience will result to the adverse party.

E. An ex parte order will be issued only if the application is accompanied by a specific declaration adequate to support its issuance. Conclusions, feelings, wishes, or fears will not be adequate to support an ex parte order.

F. The moving party’s papers will be presented to the Judge for signature at the time of the ex-parte hearing. If, as a result of the ex-parte hearing, a further hearing is

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needed, the moving party shall pay another filing fee at the time the Order to Show Cause signed by the Judge at the ex-parte hearing is filed.

G. If a party to a dissolution or paternity action is seeking ex-parte orders as a result of domestic violence and there is currently a Dissolution or Paternity action in this county, said request shall be filed by means of a Domestic Violence Prevention Order to Show Cause and shall use the existing case number. This does not apply to Emergency Protective Orders (EPO) that are generated by law enforcement.

H. An application for an order seeking confirmation of sole custody for a party shall specify the duration and other circumstances justifying continued sole custody.

I. There is an absolute duty to disclose the fact that a requested ex parte order will result in a change of status quo. Failure to disclose or misrepresentation of the facts may result in an award of sanctions.

*(Effective July 1, 2004).*

**RULE 411: ORDER EXCLUDING FROM HOME OR STAY AWAY**

A. An application for an ex parte restraining order excluding either party from the family dwelling or the dwelling of the other, or a stay away order, causing the same result must be supported by a declaration showing:

- 1) a right to possession of the home,
- 2) the danger of immediate and serious harm specifying in detail the time and place of any past act or acts of alleged misconduct as required by Family Code §6321,
- 3) the availability of alternate housing for each party,
- 4) whether the residence involved is currently occupied by one or both parties and
- 5) if not occupied by one or both parties, contain a declaration as to when one or both parties left the residence and the reasons therefore.

If violence has taken place or seems likely, the Court encourages a spouse alleging such violence to leave the home until after a Court hearing may be held. The Court will not penalize a spouse for doing so.

*(Effective July 1, 2004).*

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**RULE 412: ORDER CHANGING CUSTODY OF MINOR**

A. An application for ex parte order to immediately change the custody of any minor child(ren) must be supported by a declaration showing by clear, specific allegations that the health and welfare of the child(ren) requires immediate change of custody. The declaration shall also set forth, in brief, the circumstances in which the child would be placed pending the hearing.

B. The declaration shall also contain a statement of which party currently has actual physical custody of the child(ren) in question, how such physical custody was obtained and for how long the party has had such physical custody.

*(Effective July 1, 2004).*

**RULE 413: EXCLUSIVE USE OF VEHICLES**

An ex parte order granting exclusive use of a vehicle will not be granted unless the declaration demonstrates that the opposing party has suitable transportation available or requires no such transportation.

*(Effective July 1, 2004).*

**RULE 414: MODIFIED ORDERS OR SET ASIDE OF EX PARTE ORDERS**

If a responding party requests an ex parte order be set aside prior to the date set for hearing, notice shall be given to the moving party as provided in Local Rule 410. The Court may order an earlier hearing date or modify the orders on a proper showing in lieu of setting aside the orders.

*(Effective July 1, 2004).*

**RULE 415: INCOME AND EXPENSE DECLARATION**

A. No case in which monetary relief of any kind is requested, including any request for child support, spousal support or attorney's fees and costs, shall be heard unless a current income and expense declaration in the form prescribed by CRC 1285.50 has been completed and filed by the moving and responding parties along with their moving and responding papers. The Income and Expense declaration filed shall be served on the opposing party with the moving or responding papers.

B. For purposes of this provision "current" means executed within 45 days of the date the matter is to be heard.

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C. When the filed declaration requires no modification to correctly state the party's income and expense from the time a prior declaration was filed with the court and served on the other party, the party making this claim shall so state this in their moving or responding papers. If a party claims there has been no change since the last filing, they will attach to their moving or responding papers their last three pay stubs or other supporting financial information supporting their claim.

D. In the event that the moving party fails to comply with this rule, the matter may be dropped from calendar and the court may impose sanctions. The court may also impose sanctions if delay results from the failure of either party to comply with this rule.

E. The Income and Expense declaration shall be considered as received in evidence at the hearing subject to amendment and/or cross-examination at the time of hearing.

F. All blanks on the Income and Expense declaration must be answered. Notations such as "unknown", "estimate", "not applicable" or "none" should be used to avoid leaving any item blank. If current facts are temporary, both the actual current facts and the estimated prospective facts may be shown if properly identified.

G. Every Income and Expense declaration shall have attached to it supporting documentation to verify income claimed.

1) If a party claims wage income, he or she shall attach his or her last three pay stubs showing both current and year to date total income paid to the individual. If the party claims that part of his/her wages are from overtime they shall so indicate in an attachment to the declaration and further indicate the amount of regular pay received by them and the frequency and amount of overtime paid.

2) If a party claims income from sources other than wages they shall attach schedules establishing the other income earned in the year preceding the preparation of the declaration (i.e. business income and expense, commission income, bonus income, rental income and expense, interest income, etc.). Business expense schedules shall identify clearly any depreciation or other non-cash expenses deductible from income.

3) If a party is unemployed they shall attach a factual declaration stating when they were last employed, where they were last employed, gross and net income derived there from, reasons for termination and efforts to seek employment since their last job.

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4) If a party is receiving Social Security income, Disability income, Unemployment compensation, Workman's compensation or other funds from any other entitlement program they shall so indicate in the declaration and attach to the Income and Expense form a copy of their most recent statement indicating the amount and expected duration of the entitlement income.

*(Effective July 1, 2004).*

### **RULE 416: GUIDELINES FOR SETTING CHILD AND SPOUSAL SUPPORT IN MERCED COUNTY**

The following guideline for determining child and temporary spousal support and related issues have been adopted by the Merced County Superior Court. It is not the court's intent that the guidelines duplicate California statutes or rules of court, or cover every anticipated question or concern, or be a research tool. Their purpose is to acquaint interested parties with the court's approach to various problems in this area of the law.

To the extent any approach suggested in these guidelines would be contrary to law in a given case, the court obviously will follow the law. Moreover, the Court will continue to exercise its independent discretion in all cases, and will depart from any approach discussed herein that would work an unnecessary hardship on any litigant. Family Law practice has been standardized to a large degree by the requirement that Judicial Council forms be used where applicable. Failure to use such forms when appropriate may result in the refusal of the Clerk to file a submitted document.

#### **a. Determination of Net Disposable Income**

Net disposable income shall be computed as required by FC Section 4059.

#### **b. Minimum Wage Presumption**

The court shall presume that a party has an ability to earn at minimum, a full-time minimum wage. Any party claiming an ability less than this presumption shall have the burden of proof to establish the lesser ability.

#### **c. Overtime or Second Job Income**

If a party has a full-time job (at least 40 hours per week) and in addition is earning supplemental income either through overtime with regular employment or through a

## MERCED COUNTY SUPERIOR COURT

second job, the court may exercise its discretion to discount the amount of gross income earned pursuant to the overtime or second job or order a percentage of the overtime earned to be paid as additional support. This is done to encourage the additional employment which benefits the supported child or children. Generally, if the court discounts overtime or second job earnings, it will use 50% of the average overtime or second job earnings in the prior year to determine support. The factors the Court may consider in exercising its discretion shall include:

- (i) Whether the overtime or second job worked is excessive;
- (ii) Whether the overtime worked is voluntary or an integral part of the party's regular employment;
- (iii) The difficulty and nature of the employment;
- (iv) The history of overtime or second job income;
- (v) A reduction in overtime or quitting the second job in order to spend more time with the children.

### **d. Hardship and other Deductions**

A party may claim a hardship deduction pursuant to Family Code Section 4070 and 4071 to reduce the amount of income used to calculate support. Hardship deductions include, but are not limited to the minimum basic living expenses incurred by a party for children living in the party's home for whom the party is **legally** obligated to support. In calculating such a hardship, the court shall consider any and all support money received by the party claiming the hardship for the child living in their home and the time that child actually spends in the party's home.

The party claiming a hardship or other deduction shall have the burden of proving by a preponderance of the evidence, the legitimacy of the obligation, actual payments made and any other element of entitlement to the deduction.

### **e. Self-Employed Parties**

The Court shall not presume that the amount or character of taxable income reported by a self-employed party for income tax purposes is an accurate reflection of gross income for purposes of computation of support, but shall consider any factors which show the actual cash flow available for personal living expenses.



**f. Employment Benefits**

The Court shall consider the fair rental or reasonable value of perquisite benefits (i.e. providing the employee with housing, vehicle, utilities, gas, insurance, cellular phone, etc.) paid for by an employer on behalf of the employee/party in determining gross income for purposes of calculating child or spousal support.

**g. Income of Party Unknown**

When a party's income is not known, a reasonable estimate of net income shall be used, based upon past employment, ability to earn, minimum wage or other such factors. For example, if a party whose employment status is unknown, is healthy and able to work, an estimated gross income based upon minimum wage may be proper if that party has no earning history or no special skills, training or education.

**h. Bonus Income**

When a party is entitled to bonuses or similar such income, the amount of which is contingent or undetermined, the court may award support based in part upon a percentage of such payments. Generally the Court will order that the percentage of bonus income be paid when the income is received. The percentage will generally be determined by reference to the Bonus report calculated by one of the programs approved by the California Judicial Council for use by the Court in calculating child support.

**i. Employment Related Travel Expenses**

If a party is required to travel in excess of fifty (50) miles daily to go to and from work, they will be entitled to a deduction from income for purposes of calculating support to the extent that travel is not reimbursed by the employer. The deduction shall be determined by multiplying the number of miles exceeding fifty (50) that the party travels each day to go to and from work by the Internal Revenue Service allowable per mile rate for car expense deductions (37 cents per mile as of 1/1/03). This amount shall be reduced by any dollar amount paid to the employee by their employer to defray this cost.

**j. Computation of Child Support**

1) The Court shall follow the State wide child support formula set forth in Family Code Section 4050 et. seq..

2) For purposes of determining the “time share” factor to be used in the formula, the court shall base the time share percentage on the **actual** visitation being exercised. A guideline for determining the time share factor is set forth in Appendix F.

3) In accordance with the provisions of the Family Law Code, the court shall use the net disposable income or earning capacities of the paying and receiving parents only and ignore the income of the new mate in establishing child support. New mate income can be considered for purposes of determining the tax effect it may have on the paying or receiving parent’s income. It may also be considered in exceptional circumstances as allowed by the Family Law Code. The most common exception will be that situation where a parent ceases employment, or decreases the time of employment, because of income brought in from a new relationship. For example, if a person earning \$30,000 per year marries a person making enough money to support the household without the necessity of both parties working and the party making \$30,000 per year then quits their job, the court can consider the income that the party was making prior to quitting in calculating support.

4) The court may order the custodial parent to release the dependency exemption for one or more of the parties’ minor children to the non-custodial parent. Generally, this will be done only when the release results in an increase in the combined net disposable incomes of the parties and benefits the child or children involved. When a release is ordered, the court shall adjust the amount of child support to reflect the tax benefit to the payor and detriment to the payee, and to assure that the payee suffers no decrease in their net disposable income after the payment of the adjusted support. The order for the release of an exemption shall be conditioned upon the payor’s full compliance with child support ordered during the tax year for which the dependency exemption is released.

5) A parent who has been ordered to pay child support shall not reduce the amount of support by reason of a claimed credit or set-off owed by the payee to the payor, or a claimed violation of a visitation or other Order, without the express written consent of the other parent or Order of the court.

**k. Health Care Insurance & Uninsured Health Care Expenses**

1) If health insurance coverage is available through the employer of either parent at no or reasonable cost, the court may order one or both parties to carry the minor child or children on same. If health insurance coverage is unavailable at no or reasonable cost through the employer of either parent, the court may order either or both parents to obtain and pay for health insurance for their child or children.

2) The court will generally Order both parties to pay equally any and all uninsured medical, dental, prescription, orthodontic, vision, counseling or other health care costs incurred on behalf of the parties' child or children. The court has discretion, however, to apportion responsibility for such costs other than equally if to apportion such costs equally would be inequitable.

**l. Travel Expense Incurred in Relation to Visitation**

1) The responsibility for actually transporting the child or children for visitation will generally be assigned to the parent receiving custody of the child or children. This will usually result in the parties equally sharing responsibility for the cost of transportation associated with visitation or custodial time share.

2) If there is an out of pocket cost incurred in transporting the child or children for visits, such as air fare, the court will generally order both parties to pay one-half of the cost of same. The court may in its discretion, if it feels an equal division of the cost is inequitable, apportion responsibility for any such costs based upon the net spendable incomes of the parties after the payment of support.

**m. Spousal Support**

The court will use one of the computer programs approved by the Judicial Council of the State of California for purposes of calculating temporary Spousal support. When determining permanent support payable the court will apply the factors set forth in Family Code Section 4320.

*(Effective July 1, 2004).*

**n. Standard Orders**

Unless otherwise ordered by the court, all support orders will be subject to the standard orders contained on Appendix G (attached).

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**RULE 417: CONTEMPT PROCEEDINGS**

A. If a person cited for contempt appears without an attorney, one continuance normally will be granted to permit the citee to retain counsel.

B. If the citee is found to be indigent, counsel shall be appointed.

C. The citee will be ordered to be present at the time and date set for the continued hearing, thus avoiding further service.

*(Effective July 1, 2004).*

**RULE 418: COURT SECURITY; SEARCHES OF PERSONS AND PROPERTY**

In order to maintain adequate physical security for court personnel, litigants and the public, the following procedures shall apply to all court facilities:

A. All persons entering the Courthouse or courtroom shall be subject to cursory search, including searches of purses, parcels and other carried items at any time deemed warranted by Court Security Personnel or as directed by a judge of the court. “Cursory search” includes the use of “pat down” searches, electronic metal detection and visual inspection of the contents of any purse, parcel or carried item.

B. All persons entering a courtroom shall be subject to detailed search, including searches of purses, parcels, or other carried items at any time authorized by the Judge of the subject courtroom. “Detailed search” shall include all of the means in the previous paragraph, plus such additional measures as may be deemed warranted by the authorizing Judge.

C. Conducting searches pursuant to this Rule, Court Security Personnel shall acknowledge the right of a person to decline a search of their person or property, on condition that they immediately leave the courthouse. Such right to leave without being searched shall not apply to searches incident to arrest or otherwise being taken into custody, or any other circumstances authorized by law which permits searches without warrant. A person who refuses to submit to search and also refuses to leave the Courthouse may be subject to arrest for violation of PC Section 148 and 166(5).

D. Conducting searches as authorized by this Rule, Court Security Personnel, to the extent reasonably practicable, shall conduct the searches with discretion and out of the general view of the public and other court participants, including jurors. In exercising

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their discretion, Court Security Personnel may take into account such factors as the intrusiveness of the search, potential disruption of court proceedings, officer safety and the security needs of the court.

E. Notwithstanding any of the foregoing provisions, upon good cause shown, a Judge of the court may order any method of search of persons or property deemed necessary on a case by case basis to secure the safety of the courthouse, court personnel, litigants and the public.

*(Effective July 1, 2004).*

**RULE 419: FIREARMS**

Except as otherwise ordered or authorized by the court, no person, including correctional officers, governmental employees, deputy sheriffs, members of the Highway Patrol, or other law enforcement representatives, other than a sheriff or person specifically charged with the security of the court building, or as otherwise authorized by the judge, shall keep on his or her person firearms or other weapons while in the court building and shall not bring any weapon into the courtroom when the appearance is in a civil, family law or probate matter.

*(Effective July 1, 2004).*

**RULE 420: TIME-SHARE**

As a guideline in calculating time-share, the court will follow Appendix F for some typical time-share arrangements. The court will base time-share on the actual visitation that is exercised, rather than the order, where the parties have followed a different schedule than the court order. In accordance with statutory guidelines, the court can also consider variation from the actual percentage of time where one of the parties is bearing a disproportionate share of the expenses related to the children.

*(Effective July 1, 2004)*

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**MERCED COUNTY SUPERIOR COURT**

**LIST OF EFFECTIVE DATES OF RULES**

Rule 1	Effective July 1, 2004
Rule 1.2	Effective July 1, 2004
Rule 1.3	Effective July 1, 2004
Rule 1.4	Effective July 1, 2004
Rule 1.5	Effective July 1, 2004
Rule 1.8	Effective July 1, 2004
Rule 2	Effective July 1, 2004
Rule 3	Effective July 1, 2004
Rule 3.1	Effective July 1, 2004
Rule 3.2	Effective July 1, 2004
Rule 4	Effective July 1, 2004
Rule 5	Effective July 1, 2004
Rule 6	Effective July 1, 2004
Rule 7	Effective July 1, 2004
Rule 8	Effective July 1, 2004
Rule 8.1	Effective July 1, 2004
Rule 9	Effective July 1, 2004
Rule 10	Effective July 1, 2004
Rule 13	Effective July 1, 2004
Rule 14	Effective July 1, 2004
Rule 15	Effective July 1, 2004
Rule 16	Effective July 1, 2004

## MERCED COUNTY SUPERIOR COURT

Rule 17	Effective July 1, 2004
Rule 18	Effective July 1, 2004
Rule 19	Effective July 1, 2004
Rule 21	Effective July 1, 2004
Rule 21(c)	Effective January 1, 2006
Rule 200	Effective July 1, 2004
Rule 300	Effective July 1, 2004
Rule 401	Effective July 1, 2004
Rule 402	Effective July 1, 2004
Rule 403	Effective July 1, 2004
Rule 404	Effective July 1, 2004
Rule 405	Effective July 1, 2004
Rule 406	Effective July 1, 2004
Rule 407	Effective July 1, 2004
Rule 407.1	Effective July 1, 2004
Rule 408	Effective July 1, 2004
Rule 409	Effective July 1, 2004
Rule 410	Effective July 1, 2004
Rule 411	Effective July 1, 2004
Rule 412	Effective July 1, 2004
Rule 413	Effective July 1, 2004
Rule 414	Effective July 1, 2004
Rule 415	Effective July 1, 2004

**MERCED COUNTY SUPERIOR COURT**

Rule 416     Effective July 1, 2004

Rule 417     Effective July 1, 2004

Rule 418     Effective July 1, 2004

Rule 419     Effective July 1, 2004

Rule 420     Effective July 1, 2004

MERCED COUNTY SUPERIOR COURT

Appendix A – Waiver of Orientation

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED  
FAMILY COURT SERVICES

FORMAL REQUEST FOR: ☐ WAIVER OF ORIENTATION  
☐ TELEPHONIC MEDIATION

CASE NAME: \_\_\_\_\_ CASE NUMBER: \_\_\_\_\_

**I. Request to Participate by Telephone for Mediation**

I, \_\_\_\_\_, submit this written request for the court's approval to conduct the currently scheduled Mediation. I understand that if granted, Mediation shall be conducted by the Mediator and I shall be advised of the possible four (4) hour period in which the Mediator shall be able to contact me. The telephone number provided below is the number that I can be reached at throughout that time period. I am requested to participate by telephone for Mediation for the following reasons:

\_\_\_\_\_

\_\_\_\_\_

**II. Request for Waiver of Orientation**

Date for Orientation as currently set by the Court: \_\_\_\_\_

I, \_\_\_\_\_, submit this written request for the court's approval for waiver of orientation ☐ Party lives over 250 miles away Address: \_\_\_\_\_  
☐ Party has been to orientation within the last 12 months *Date of last orientation:* \_\_\_\_\_  
☐ Telephone Number (including area code) to confirm waiver of Orientation \_\_\_\_\_

**III. Telephone Number of Party Requesting to Appear Telephonically**

I, \_\_\_\_\_, submit that this is a true and correct telephone number of where I can be reached for the purpose of court contact and mediation:

\_\_\_\_\_

Telephone Number including area code

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Party*

---

♦ *If Orientations is waived, it is the party's responsibility to contact the Court to find out the date and time for Mediation by contacting the Clerk's Office at (209) 725-3827*

Based on the above statement, the request for: ☐ Telephonic Mediation ☐ Waiver of Orientation is hereby:

\_\_\_\_\_

(granted or denied)

Date: \_\_\_\_\_

\_\_\_\_\_  
*Judge of the Superior Court*

♦ For Court Call Information, see the back of this form

Gave party information/Left message for party \_\_\_\_\_ by \_\_\_\_\_

(Date) (Court Clerk Initials)

REVISED 2/19/03 Appendix A

MERCED COUNTY SUPERIOR COURT

Appendix B – Ex-Parte Application for Release

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address and state bar number)	FOR COURT USE ONLY
TELEPHONE NO: E-MAIL ADDRESS: ATTORNEY FOR:	FAX NO.:
<b>SUPERIOR COURT OF CALIFORNIA COUNTY MERCED</b> STREET ADDRESS: <b>1901 G STREET</b> MAILING ADDRESS: CITY AND ZIP CODE <b>MERCED, CALIFORNIA 95340</b> BRANCH NAME:	
PETITIONER:  RESPONDENT:	
<b>EX-PARTE APPLICATION FOR RELEASE OF MEDIATOR'S RATIONALE OR EVALUATOR'S RATIONALE/REPORT OR MINORS COUNSEL REPORT AND ORDER THEREON</b>	CASE NUMBER

APPLICATION and DECLARATION

☐ MEDIATOR'S RATIONALE OR ☐ EVALUATOR'S RATIONALE/REPORT OR ☐ MINORS COUNSEL REPORT

☐ PETITIONER ☐ RESPONDENT REQUESTS release of the Rationale or Report for the Recommendation filed on the following dated: \_\_\_\_\_ which is reasonably necessary for me to understand the recommendation.

I declare under penalty of perjury that the foregoing is true.

Date:

DECLARANT'S NAME (PRINT) \_\_\_\_\_

SIGNATURE OF DECLARANT \_\_\_\_\_

(Continued on reverse)

MNG 2/11/03

EX-PARTE APPLICATION FOR RELEASE OF EVALUATOR'S RATIONALE AND ORDER

Appendix B

**MERCED COUNTY SUPERIOR COURT**

**ORDER**

**GOOD CAUSE APPEARING THEREFOR IT IS ORDERED:**

- ☐ THE REQUEST IS DENIED. THE CLERK SHALL SET THE MATTER FOR HEARING AND NOTIFY THE PARTIES:
- ☐ THE RATIONALE SHALL BE RELEASED WITHOUT RESTRICTION, OTHER THAN THOSE SET FORTH BELOW.
- ☐ THE RATIONALE SHALL BE EXAMINED BY THE PARTIES OR ATTORNEYS FOR THE PARTIES IN THE CLERK'S OFFICE
- ☐ THE RATIONALE SHALL BE RELEASED TO THE ATTORNEYS FOR THE PARTIES WHO SHALL NOT MAKE ANY COPIES OF IT, BUT MAY REVIEW THE CONTENTS THEREOF WITH THE PARTIES.
- ☐ THE RATIONALE SHALL BE RELEASED TO THE PARTIES WITHOUT RESTRICTION AFTER THE COURT HAS REDACTED PARTS WHICH IT DEEMS SENSITIVE OR HAVING THE POSSIBILITY OF CREATING FURTHER CONFLICT
- ☐ THE RATIONALE SHALL BE RELEASED WITH THE FOLLOWING CONDITIONS:

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**NOTICE**

- IN ALL CASES THE INFORMATION AND REPORTS ARE CONFIDENTIAL AND MAY BE REVIEWED ONLY BY THE PARTIES AND THEIR ATTORNEYS.
- NO COPIES OF THE REPORT SHALL BE PUBLISHED OR OTHERWISE DISTRIBUTED.
- THIS IS A COURT ORDER AND IS SUBJECT TO ENFORCEMENT BY CRIMINAL PROCEEDINGS OR CIVIL CONTEMPT.

DATE:

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

\_\_\_\_\_  
EX-PARTE APPLICATION FOR RELEASE OF EVALUATOR'S RATIONALE AND ORDER

MNG 2/11/03

Appendix B (2 of 2)



## Appendix C – Objection to Recommended Order

THE ABOVE PARTY OBJECTS TO THE FOLLOWING PROVISIONS OF THE RECOMMENDED ORDER:

FACTS SUPPORTING OBJECTIONS:



MERCED COUNTY SUPERIOR COURT

PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	CASE NUMBER:
--	--------------

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

.....  
(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

☐ Petitioner / Plaintiff: ☐ Respondent / Defendant ☐ Attorney  
☐ Other (specify):

Appendix C (2 of 2)

MERCED COUNTY SUPERIOR COURT

Appendix D – Ex-Parte Request-Disqualification

NAME AND ADDRESS OF ATTORNEY		FIR COURT USE ONLY:
Telephone No.:                      FAX:		
Attorney For:		
SUPERIOR COURT OF CALIFORNIA COUNTY OF MERCED		
STREET ADDRESS: 1901 "G" STREET		
MAILING ADDRESS: 2222 "M" STREET		
CITY AND ZIP CODE: MERCED, CALIFORNIA 95340		
BRANCH NAME: FAMILY LAW FACILITY		
PETITIONER:		
RESPONDENT:		
CLAIMANT:		
EX-PARTE REQUEST AND ORDER RE: DISQUALIFICATION OR MEDIATOR OR EVALUATOR		Case Number:

1) I am the Petitioner \_\_\_ Respondent \_\_\_ Other \_\_\_\_\_ in the action herein.

2) I move to disqualify \_\_\_\_\_ to act as Mediator or Evaluator in the matter herein for the following reasons:

a) Conflict of Interest. Please state all facts which support this claim. You may attach additional pages as needed.

b) Other. Please state all facts which support this claim. You may attach additional pages as needed.

Dated:

\_\_\_\_\_  
Petitioner/Respondent/Other

Appendix D

**MERCED COUNTY SUPERIOR COURT**

**Order**

The Court hereby:

Denies the Order requested: \_\_\_\_\_

Grants the Order requested: \_\_\_\_\_

It is so ordered.

Dated:

\_\_\_\_\_  
Judge/Commissioner of the Superior Court

**PROOF OF SERVICE BY MAIL**

On \_\_\_\_\_ I served the above Ex-Parte Request and Order Re: Disqualification of Mediator or Evaluator by depositing a copy thereof, enclosed in a sealed envelope, with postage prepaid, in the United States mail to the following parties and/or their attorney of record at the following addresses:

At the time of service, I was at least 18 years of age and **not** a party to the action. My address is:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this declaration is executed on \_\_\_\_\_, at Merced, California.

\_\_\_\_\_  
**Appendix D (2 of 2)**

## Appendix E – Declaration in Support of Ex-Parte Application

75



## Appendix F – Determining the Visitation Percentage

Page 4 of the Income and Expense Declaration (Item #2) will ask you for the percentage of custody/visitation you have with your child/ren. To calculate that figure, use a calendar to determine the number of days each month that you had the child/ren with you. Enter that amount in the last column on the applicable line for each month.

Divide the total number of days in the year that you had the child/ren (last column) by 365 for a regular year and 366 for a leap year to obtain the visitation percentage.

If you are calculating the visitation percentage based on a period that is less than a the full year, divide the total number of days that you had the child/ren in that period by the total number of days for the period being used.

C:\Documents and Settings\ap99\Local Settings\Temp\visitation chart.doc

# MERCED COUNTY SUPERIOR COURT

## SCHEDULE OF MOST COMMON VISITATION ARRANGEMENTS

VISITATION ARRANGEMENT	EQUIVALENT DAYS OF VISITATION IN THE YEAR	VISITATION PERCENTAGE
1 weekend per month	26	7.1
1 long weekend per month	38	10.4
2 weekends per month	49	13.4
1 night per week	52	14.2
Alternate weekends	55	15.1
Alternate weekends + 1/2 month in the summer	67	18.4
Alternate weekends + alternate holidays + 1/2 month in the summer	73	20.0
2 long weekends per month	75	20.1
Alternate weekends + alternate holidays + 1 month in the summer	85	22.2
1 weekend per month + 1 night per week	90	24.7
Alternate weekends + alternate holidays + 1/2 month in the summer	94	25.8
2 days per week	104	28.5
Alternate weekends + 1 evening per week + alternate holidays plus 1 month in the summer	111	30.4
All no-school time	112	30.7
Alternate weekends + 1 evening per week + 1/2 no-school time	125	34.2
Alternate weekends + 1 night per week + alternate holidays + 1 month in the summer	137	37.5
Alternate weekends + 1 night per week + 1/2 no-school time	151	41.4
Alternate weekends + 1 evening per week + all summer	153	41.9
3 days per week	156	42.7
Alternate weekends + 1 night per week + all summer	179	49.0
Alternate 3 days/4days	182	50.0
<b>DEFINITIONS:</b> <b>Weekend (2 days)</b> = 5-7 PM Friday to 5-7 PM Sunday (or to 5-7 on major holiday Mondays) <b>Long weekend (3 days)</b> = After school Friday to beginning of next school day. <b>One evening per week (1/2 day)</b> = After school to after dinner. <b>One night per week (1 day)</b> = After school and overnight. <b>Holidays (12 days per year)</b> = New Year's, President's, Memorial, Mother's or Father's Day, Independence, Labor, Veteran's, Thanksgiving (2), Christmas and birthdays of child and non-custodial parent. <b>Summer (84 days per year)</b> = Twelve weeks from 2nd week in June through next to last week in August. <b>No-school time</b> = Time child is not in school.		

Appendix F

MERCED COUNTY SUPERIOR COURT

Appendix G – Standard Orders Attachment

STANDARD ORDERS ATTACHMENT

(TO ORDER RE: CHILD SUPPORT)

THE FOLLOWING IS MADE A PART OF THE COURT'S ORDER:

1. All payments must be made to: **MERCED COUNTY DEPARTMENT  
OF CHILD SUPPORT SERVICES  
P.O. BOX 3199  
MERCED, CA 95344**
2. Child support payments are payable by *Order/Notice to Withhold Income for Child Support* (form FL-195). **An *Order/Notice to Withhold Income for Child Support* (form FL-195) will issue.**
3. The non-custodial parent/obligor must (a) provide and maintain health insurance coverage for the children as obligated by law; (b) within 20 days of the Merced County Department of Child Support Services request, complete and return a *Health Insurance Form*. Each party is responsible for one-half (1/2) of all medically necessary uninsured medical costs. **A *Health Insurance Coverage Assignment* (form FL-470) will issue.**
4. No provision of this judgment/order may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. Interest will accrue on the entire principal balance owing and not on each installment as it becomes due. All payments ordered are subject to modification.
5. The non-custodial parent/obligor must notify the *Merced County Department of Child Support Services* within 5 days in writing of any change in residence, income, or employment.
6. The non-custodial parent/obligor is responsible for paying all child support and reimbursement payment obligations as of the effective date of the order and shall be responsible for making voluntary payments during any period of time when payments are not being made by an *Order/Notice to Withhold Income for Child Support*.
7. Current child support shall be modified and set at \$0.00 per month starting on the 1<sup>st</sup> day of the month following the incarceration of an obligor, if that incarceration is for 30 or more days consecutive. Current child support shall resume as previously set by court order on the 1<sup>st</sup> day of the 2<sup>nd</sup> month after the obligor's release from incarceration.
8. Current child support shall be modified and set at \$0.00 per month starting on the 1<sup>st</sup> day of the month following the entrance of an obligor into a live-in drug or alcohol treatment program that lasts for at least 30 days consecutively and which prevents obligor from earning income other than that which is paid to the program as a term of that program. This reduction shall only apply if obligor successfully completes the treatment program. Current child support shall resume as previously set by court order on the 1<sup>st</sup> day of the 2<sup>nd</sup> month after obligor's leaving the live-in program.
9. The Court reserves jurisdiction to retroactively modify and set child support for any periods that obligor is incarcerated or in a live-in program if the Court determines that while incarcerated or while in the live-in program the obligor had an ability to pay current child support.

**NOTICE: Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.**

X:\LEGAL\FORMAT\STANDARD ORDERS ATTACHMENT.DOC

Revised 10/07/2003

APPENDIX G